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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 LINDA A. BOOBER,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.

Case No. C20-1052 RSM

**ORDER DENYING PLAINTIFF'S  
MOTION FOR RELIEF FROM  
JUDGMENT**

12 This matter is before the Court on Plaintiff's motion for relief from judgment under Fed.  
13 R. Civ. P. 60(b)(6). Dkt. 31. Having considered the motion and the parties' briefing, the Court  
14 **DENIES** the motion.

15  
16 **BACKGROUND**

17 On April 20, 2021, the Court entered an order reversing the Commissioner's denial of  
18 benefits and remanding for further administrative proceedings. Dkt. 29. On May 20, 2021,  
19 Plaintiff filed the instant motion. Dkt. 31. Rule 60(b)(6) provides that on "just terms," a court  
20 "may" relieve a party from a final judgment or order for "any ... reason that justifies relief."

21 "To receive Rule 60(b)(6) relief, a moving party must 'show both injury and that  
22 circumstances beyond its control prevented timely action to protect its interests.'" *Lehman v.*  
23 *U.S.*, 154 F.3d 1010, 1017 (9th Cir. 1998) (quoting *U.S. v. Alpine Land & Reservoir Co.*, 984

1 F.2d 1047, 1049 (9th Cir.1993)). Plaintiff has shown neither.

2 **A. Timeliness**

3 Rule 59 permits a court to alter or amend a judgment only on a motion filed within 28  
4 days. Plaintiff provides no reason why she could not have filed a motion within 28 days of  
5 judgment. While Rule 60(b)(6) does not contain a deadline, “[n]eglect or lack of diligence is not  
6 to be remedied through Rule 60(b)(6).” *Lehman*, 154 F.3d at 1017. Plaintiff provides no  
7 authority to support her assertion that the Court’s “failure to award benefits constitutes  
8 extraordinary circumstances warranting relief.” Dkt. 33 at 1. Plaintiff’s argument appears to be  
9 that the Court’s error was so clear that the 28-day deadline to challenge a judgment should not  
10 apply. If the error were so clear, that is all the more reason Plaintiff should have recognized and  
11 addressed it within 28 days.

12 Plaintiff alternatively asks the Court to treat her motion as “either a Rule 60(b)(1) motion  
13 based on excusable neglect or as an untimely filed motion for reconsideration.” Dkt. 33 at 1.  
14 Plaintiff relies on a case where the Ninth Circuit, applying a different rule, held that weighing the  
15 factors to determine excusable neglect should be left “to the discretion of the district court in  
16 every case.” *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004) (applying Fed. R. App. P.  
17 4(a)(5)(A)). Because Plaintiff fails to provide any excuse for failing to timely challenge the  
18 order, the Court cannot grant her motion under Rule 60(b)(1). There can be no excusable neglect  
19 without an excuse.

20 As to Plaintiff’s request for her motion to be treated as an untimely motion for  
21 reconsideration, she provides no authority for acceptance of such a motion. “Motions for  
22 reconsideration are disfavored.” LCR 7(h)(1). Such motions “shall be filed within fourteen days  
23 after the order to which it relates is filed.” LCR 7(h)(2). Plaintiff fails to provide any authority

1 for accepting an untimely motion.

2 Plaintiff's motion was therefore untimely whether considered under Rule 59, Rule  
3 60(b)(1), Rule 60(b)(6), or Local Rule 7(h).

4 **B. Injury**

5 Moreover, Plaintiff's Rule 60(b)(6) motion fails because she shows no injury. *See*  
6 *Lehman*, 154 F.3d at 1017. Plaintiff contends that, because she lacked transferable skills, the  
7 Medical-Vocational Guidelines mandated an award of benefits beginning March 2015. Dkt. 31.  
8 As the Court wrote in its order, "[t]he Commissioner d[id] not dispute that the ALJ did not find  
9 Plaintiff had any transferable skills." Dkt. 29 at 7. However, the record reveals that the ALJ  
10 found at step four that Plaintiff was not disabled because she could perform past work. Dkt. 19,  
11 Admin. Transcript (Tr.) 837-38. Because the five-step disability determination was resolved at  
12 step four, the ALJ made no determination regarding transferable skills at step five.

13 Plaintiff's claim that "[u]ncontroverted" evidence establishes she lacks transferable skills  
14 mischaracterizes the record, as the vocational expert testified Plaintiff had several transferable  
15 skills. Dkt. 33 at 2; Tr. 76 ("ability to type and post information"; "Recording information...,  
16 composing and creating documents").<sup>1</sup> The ALJ did not analyze any of the evidence about  
17 transferable skills, and this Court cannot make independent findings based on the evidence  
18 before the ALJ.<sup>2</sup> *See Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015). The Court  
19 cannot conclude, as a matter of law, that Plaintiff had no transferable skills. Plaintiff has not  
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21 <sup>1</sup> Plaintiff argues this testimony is irrelevant because it relates to sedentary work. Dkt. 33 at 3. But the  
22 testimony is not expressly limited to sedentary work. *See* Tr. 76. Moreover, even a high school graduate  
23 like Plaintiff (Tr. 28) limited to sedentary work is not disabled under the Medical-Vocational Guidelines  
if she has transferable skills. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201.07.

<sup>2</sup> Moreover, in a previous ALJ decision in this case, the ALJ did address the issue and found Plaintiff had transferable work skills. *See* Tr. 28.

1 shown she was entitled to an award of benefits.

2 Accordingly, Plaintiff has not established any injury caused by the Court's order  
3 remanding the case for further administrative proceedings.

4 **CONCLUSION**

5 For the reasons stated above, Plaintiff's motion is **DENIED**.

6 DATED this 8<sup>th</sup> day of June, 2021.

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9 RICARDO S. MARTINEZ  
10 CHIEF UNITED STATES DISTRICT JUDGE  
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